

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICKEY WEBB,

Plaintiff,

v.

**COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,**

Defendant.

No. CV 08-1067-HU

OPINION AND ORDER

MOSMAN, J.,

On November 23, 2010, Magistrate Judge Hubel issued his Findings and Recommendation ("F&R") (#57) in the above-captioned case recommending that I grant in part

plaintiff's motion for fees and costs under the EAJA (#44) in the amount of \$7,004 as fees, and \$371.60 as costs.

STANDARD OF REVIEW

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

DISCUSSION

Judge Hubel found that the government's position was not substantially justified. F&R at 4 (#57). The Commissioner's objections (#59) raise the same argument it raised in its briefs, that its position was substantially justified because it was recommended in the previous F&R (#33). For the reasons stated in my prior decision (#42), I agree with Judge Hubel.

Plaintiff's counsel's objections are rejected as untimely. Objections were due December 13, 2010. 28 U.S.C. § 636(b)(1); F&R at 7 (#57). The Commissioner timely filed objections on December 9, 2010. (#59) On December 16, 2010, three days after the deadline for objections,

plaintiff's counsel requested an extension of time to file a *response* to the government's objections by January 6, 2010. (#60) I granted the request to file a response but did not grant an extension to file new objections. (#62) Therefore the objections in plaintiff's response were untimely.

CONCLUSION

Upon review, I ADOPT Judge Hubel's F&R (#57) as my own and I GRANT the award of fees and costs as stated in the F&R.

IT IS SO ORDERED.

DATED this 18th day of January, 2011.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court